

South Dakota Department of Education  
Case 2020-06

Complaint Investigation Report and Written Report of Final Decision

Introduction

A complaint was received by the South Dakota Department of Education, Special Education Programs, ("the Department"), on June 10, 2020. The complaint was filed by [ ] ("Mother"). Brookings School District, ("the District"), was served with a written copy of the complaint by the complainant on June 10, 2020. In a letter dated June 12, 2020, from Linda Turner, Director of Special Education Programs, the parties were informed of the complaint and the opportunity to submit additional information. Wallace J. Calder was appointed as the complaint investigator pursuant to ARSD § 24:05:15:05.

The complaint raises issues under Part B of the Individuals with Disabilities Education Improvement Act of 2004, ("IDEA"). The Department, through the complaint resolution process required by 34 C.F.R. §§ 300.151 to 300.153, investigates alleged violations of Part B of the IDEA and its implementing regulations.

Legal Authority

20 USC §§ 1400-1487; 34 CFR Part 300

SDCL Chapters 13-28. 13-37

ARSD Article 24:05

Statement of Issues

1. Did the District implement a series of disciplinary removals of Student from District transportation (the school bus), or from Student's educational placement to suspension, for more than 10 school days during the 2019/2020 school year and, if so, did the District adhere to the IDEA and State rules by:

a. Conducting a manifestation determination regarding Student's disciplinary removal within 10 school days following a behavior incident which occurred on March 4, 2020, and

b. Providing appropriate educational services to Student on March 6, 9 and 10, 2020, during Student's disciplinary removal.

2. Did the District unilaterally change Student's placement by implementing distance-learning for general and special education and related services to Student when the District closed its schools during the state mandated school closure period from March 13, 2020, through the period of extended school year (ESY)?

3. Did the District implement Student's special education and related services as set forth in Student's March 4, 2020, IEP during the state mandated school closure period and during ESY?

4. Did the District's actions and/or omissions in relation to transportation result in the denial of FAPE to Student, in violation of 34 CFR §p00\_17 and 300.101?

#### Interviews

1. Telephonic interview with the [ ] and [ ] Parents on August 3, 2020.

2. Telephonic interview with Wendy Otheim, Special Education Director, Christian R. Schafer and Richard J. Helsper, District Attorneys on August 3, 2020.

3. Telephonic interview with [ ] District Special Education Teacher, Christian R. Schafer and Richard J. Helsper, District Attorneys on August 3, 2020.

4. Telephonic interview with the [ ] District Special Education Teacher, Christian R. Schafer and Richard J. Helsper, district attorneys on August 3, 2020.

7. On March 21, 2019, Student's IEP team met to review and revise Student's IEP. The March 21, 2019, IEP was later amended by Student's IEP team on August 29, 2019; September 19, 2019; October 1, 2019; October 10, 2019; October 23, 2019; November 22, 2019; and December 5, 2019.

8. On August 12, 2019, Student's IEP team met to discuss Student's schedule for the 2019/2020 school year. Parents proposed that Student's placement be changed to a full-time classroom at a [ ] in the District, but this proposal was rejected by the IEP team due to Student's significant negative behaviors in the spring and summer. The District recommended a slower transition plan back to in. The IEP team also agreed to have a behavior evaluation completed by an outside behavior Specialist.

9. On August 29, 2019, the IEP team met and agreed to a plan to transition Student back to a full-time placement at the [ ] school. Over the following three months Student's time at the [ ] school was steadily increased until November 22, 2019, when the IEP team agreed to Student attending the [ ] school full-time.

10. On August 29, 2019, Student's Crisis Management Plan (CMP) developed by BCS was updated. Parents participated in the development of, and signed, the updated CMP. Several important and relevant provisions of the Crisis Management plan are as follows:

a. When Student is engaging in maladaptive behavior, "staff will follow the behavior plan."

b. "If the situation escalates to a point where staff cannot effectively keep [Student] and others safe, then staff will contact the Clinical Supervisor. The Clinical Supervisor will call Parents and discuss options moving forward. Such options include parents giving a PRN [as needed medication] or coming and picking [Student] up."

c. The incident is resolved after 30 minutes with no precursor or maladaptive behaviors or 60 minutes if the episode met continuous aggression, self-injurious behavior, and/or high magnitude disruption (CASH) criteria and required Professional Crisis Management (PCM) procedures. "[Student] must be on-task and following demands (compliance) as stated in [Student's] behavior plan."

11. Student's March 21, 2019, IEP, as amended in the Fall of 2019, provides. in relevant part. as follows:

a. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) describe Student's strengths generally as follows:

i. Student is able to communicate thoughts, wants and needs in sentences, complete vocabulary activities with synonyms and antonyms, and retain and recollect information presented in stories;

ii. Student has a high work ethic and wants to do well;

iii. Student can transition across activities and follow multi-step directions;

iv. Student has a high interest in reading and can read at a fourth-grade level;

v. Student can use and write sentences with punctuation, complete multiple digit addition, subtraction and multiplication and basic division, and to tell time;

vi. Student will seek out conversations using 6-8 words and phrases with appropriate articulation.

b. The PLAAFP generally describes Student's needs as follows:

i. Student has difficulty in conversational exchanges and struggles to know what to say to peers for social interaction and friendship;

ii. Student struggles to accept "no" for an answer, transition away from highly preferred activities, ask for a break or request help or clarification. Student averages 221 minutes per week of crisis episodes and 116 minutes per week of refusal episodes.;

iii. Student needs to expand understanding and application of spelling rules, write compound, complex and compound-complex sentences and summarize information.

iv. Complete multi-digit division, develop skills with integers, and functionally use measurement in daily living skills;

v. increase Student's ability to maintain and expand conversational topics, to use an appropriate tone of voice and volume and turn-taking during a conversation;

vi. Student learns best in a separate school setting in a highly structured environment.

vii. when Student is frustrated, anxious or upset, Student has displayed unexpected behaviors such as hitting, kicking, throwing objects, spitting, biting or stripping.

c. Annual Goals: Student's IEP includes five annual goals that address academic content areas of Social Language, Reading Comprehension, Written Expression and Math. The IEP also includes seven annual goals that address functional/behavioral content areas of Adaptive Behavior regarding mealtime, requesting a break and accepting an alternative, crisis episodes, refusal, ingestion's, and social skills/regulation.

d. Accommodations for Student include: breaks, calculator, multiplication table, text-to-speech, scribe, separate setting, repeating/simplifying/clarifying directions, visual supports, and positive, concrete reinforcers.

e. Modifications: when Student's behaviors do not allow Student to use technology (aggressive, frustrated), Student will be given alternative formats to complete assigned tasks (paper copies, verbal response, etc.).

f. Special Education Services provided in the special education classroom as follows:

i. Reading services for 40 minutes per day;

ii. Math services for 40 minutes per day;

iii. Written Expression services for 40 minutes per day;

iv. Adaptive services for 90 minutes per day;

v. Social Skills services for 90 minutes per day;

vi. Inclusion Support for 390 minutes per day; and

vii. Life Skills to include Science and Social Studies for 80 minutes per day.

g. Related services were included as follows:

i. Language therapy provided by speech language pathologist (SLP) in a 1:1 or small group setting to address communication goals, 30 minutes two times per week;

ii. Occupational Therapy (OT): OT staff will consult with educational staff quarterly to monitor fine motor concerns and offer activity suggestions for Student's sensory breaks; and

iii. Transportation from home to school and from school to home, 20 minutes per day.

h. The IEP indicates that Student's classroom setting would be in a self-contained classroom at a [ ] school in the District because this allows for a small group setting that provides structure and

close monitoring that cannot be provided in the other settings considered. As of November 22, 2019. Student was no longer attending, or receiving any services from, BCS.

i. The March 21, 2019, IEP provides that Student would receive ESY services five days per week for 6.5 hours per day, to address Student's Annual Goals 312 and SLP services.

12. During the 2019/2020 school year prior to November 22, 2019, Student rode the school bus to the [ ] school in the morning, the District transported Student from the [ ] school to BCS in the late morning or early afternoon, and Student rode the District's school bus from BCS to home in the afternoon at the end of the school day.

13. Parent's Complaint and the Parental Prior Written Notice (PPWN) dated December 5, 2019, both indicate that Parent informed the IEP team for the first time on that date that between September 3 and November 5, 2019, Parents had been called by BCS staff to pick up the Student at BCS "and feel that this is a compliance issue." District records from BCS staff document that the parents were called to pick up the student on September 3, 12, 13, 16, and 18, October 3, 7, and 10, and November 1, 4, 5, and 19, 2019; a total of 12 days. After the April 2, 2020 MDR, the parents provided a statement indicating that they were called to pick up Student on September 3, 5, 12, 13, 16, and 18, October 3 and 7, and November 1, 4, and 15, 2019: a total of 11 days. The District acknowledges that the Parents stated their belief at the IEP team meeting that the calls to pick up the Student after school were bus suspensions. The Parents report that in the December 5, 2019, IEP team meeting, they requested an MDR regarding the incidents with bus transportation. The District disagreed that the calls to pick up the Student at BCS were bus suspensions.

14. Student's IEP provides transportation for Student to and from school as a related service.

15. District and Parent records consistently indicate that on the 11 or 12 dates in question during September-November, 2019, Parents did receive a call from BCS staff that Student would not be riding the bus home and that Parents would need to pick up Student at BCS.

16. Parents have not alleged in their Complaint, and there is no documentation from the District, that Student's behavior while on the school bus was the reason why Student was not allowed to ride the school bus on any of the dates in question. There is no documentation from BCS or from the District that a written bus suspension was ever issued to Student by BCS, or by the District, on any of the dates in question. Parents have not provided, or alleged that they received, a written bus suspension for Student from BCS, or from the District, for any of the dates in question.

17. The District's documentation includes a statement from BCS Coordinator on December 10, 2019, stating that the reasoning for the calls to Parents to pick up Student "was either that [Student) hadn't finished [Student's] work that day due to maladaptive behaviors, and was staying late to finish [Student's) work as written in [Student's] BIP [Positive Behavior Support Plan], or that [Student's] behavior at the time of the bus pickup was deemed too dangerous to ride, and [Student's] parents were called to pick [Student] up once [Student's] behavior was ruled safe for transportation." BCS and the District informed Parents that BCS was following Student's August 29, 2019, CMP on the days in question, which

- ix. Student learns best in a separate school setting in a highly structured environment.
  - x. when Student is frustrated, anxious or upset, Student has displayed unexpected behaviors such as hitting, kicking, throwing objects, spitting, biting or stripping;
  - xi. Student has limited understanding of factors that influence job retention, dismissal, and promotion and needs assistance with hygiene and grooming;
  - xii. Student requires assistance to be punctual and use a timecard;
  - xiii. Student is inconsistent using appropriate social behavior such as sharing, cooperation, taking turns during recreation and leisure activities and is not always cooperative;
  - xiv. Student requires support in taking prescription and nonprescription medications appropriately;
  - xv. Student needs support to respond to emergency situations in the community, is not able to make small purchases in the community and does not understand safety cautions with strangers; and
  - xvi. Student needs to learn how to respond appropriately to authority figures and struggles with verbal correction from others.
- c. The IEP contains a section of Transition Postsecondary Goals. Student wants to pursue a career in education as a reading teacher. Student will require 22 credits in order to graduate from [ ] school in the District.
- d. The IEP also contains a section of Transition Services/Coordinated Set of Activities which describes activities Student will need in employment, daily living skills, community experiences, and post-school adult learning.
- e. Annual Goals: Student's IEP includes seven annual goals which include five goals that address academic content areas of Social Language, Reading Comprehension, Written Expression and Math, and two goals that address functional/behavioral content areas of Behavior, related to reducing the occurrence of four maladaptive behaviors per quarter, and Adaptive Behavior regarding displaying appropriate mealtime behavior.
- f. Accommodations for Student include: breaks, calculator, multiplication table, text-to-speech, scribe, separate setting, repeating/simplifying/clarifying directions, visual supports, and positive, concrete reinforcers.
- g. Modifications: when Student's behaviors do not allow Student to use technology (aggressive, frustrated), Student will be given alternative formats to complete assigned tasks (paper copies, verbal response, etc.).
- h. Special Education Services provided in the special education classroom as follows:

- i. Reading services for 40 minutes per day;
- ii. Math services for 40 minutes per day;
- iii. Written Expression services for 40 minutes per day;
- iv. Adaptive services for 90 minutes per day;
- v. Social Skills services for 90 minutes per day;
- vi. Inclusion Support for 390 minutes per day; and
- vii. Life Skills to include Science and Social Studies for 80 minutes per day.

i. Related services were included as follows:

i. Language therapy provided by SLP in a 1:1 or small group setting to address communication goals, 30 minutes two times per week;

ii. Occupational Therapy (OT): OT staff will consult with educational staff quarterly to monitor fine motor concerns and offer activity suggestions for Student's sensory breaks; and

iii. Transportation from home to school and from school to home, 20 minutes per day.

j. The IEP indicates that Student's classroom setting would be in a self-contained classroom at a [ ] school in the District because this allows for a small group setting that provides structure and close monitoring that cannot be provided in the other settings considered.

k. The March 4, 2020, IEP provides that Student would receive ESY services during the Summer, 2020, five days per week for 3.5 hours per day plus one 30-minute Speech therapy session per week, to address Student's Annual Goals and SLP services. The ESY services were scheduled to begin on June 1, 2020, and continue through August 14, 2020, in a special education classroom.

l. The March 4, 2020, PPWN provided by the District to Parents indicates, among other things, that the IEP team discussed Student's behavior and lunch schedule. It was indicated that Student's crisis episodes have decreased (three the previous quarter), including aggression to staff, stripping, urinating and destruction of property. It was also indicated that refusal times have increased. Parents proposed to allow Student to have lunch in the cafeteria daily, rather than having to earn this. The IEP team agreed to meet prior to the end of the school year to adjust the frequency/duration of Student's services for the [ ] school.

25. On March 4, 2020, Student's BSP, now referred to by the District as the RIP, was updated by Student's IEP team.

26. District records indicate that on March 4, 2020, Student was involved in a behavior incident which resulted in a disciplinary removal of Student. The facts related to the behavior incident and the subsequent disciplinary removal are as follows:

a. District records indicate that in the five-day period prior to the behavior incident on March 4, 2020, the District recorded a total of 62 incidents of physical aggression where Student hit, kicked, scratched, bit and grabbed or pulled staff members' hair.

b. District records indicate that on March 4, 2020, Student became agitated during lunch with peers, pushing a student in line and tearing a roll out of another student's hand, screaming, and becoming physically aggressive toward staff who intervened. A vertical restraint was used by school staff to calm Student down and Student then returned to class.

c. After Student was calm in the classroom, Student transitioned to the library, a favorite activity of Student, accompanied by a behavior technician. In the library Student saw another student reading a book Student wanted to read. Student approached the other student and pushed, grabbed the hair of, and attempted to bite the head of, the other student. The behavior technician intervened and Student bit him twice while he was attempting to unwind the other student's hair from Student's hand.

d. The District scheduled a meeting of Student's IEP team, including Parents, for the following day, March 5, 2020, to discuss the behavior incident involving Student. The March 5, 2020, PPWN provided to Parents states that after discussing the behavior incident, the District proposed that Student remain in the self-contained classroom and not go out into the general education setting when other students are around until Student exhibits zero aggressions toward adults. Parents rejected this proposal because they believed that the recent events were a spike in Student's behaviors and Parents question whether Student's behavior program was being followed. The IEP team agreed that if Student displayed target behaviors Student would not go out that day into inclusive settings, and if Student did not display such behaviors Student could go out accompanied by three staff.

e. March 5, 2020, PPWN further states that the District informed Parents that Student was being given a five day out of school suspension (OSS) for violating the Districts code of student conduct regarding Student's physical aggression on March 4, 2020, which resulted in trauma to the other student and the behavior technician. The OSS was to begin the following day, March 6, 2020, and Student would be able to return to school on March 13, 2020.

27. On March 5, 2020, after the IEP team meeting, Parents emailed a letter to the District setting forth their expectation that the District "will follow all procedures related to the suspension procedures for students with disabilities as outlined in your comprehensive plan for special education and the Administrative Rules of South Dakota governing special education and discipline for students in need of special education." The letter states Parents' assertion that the 11 occasions in September, October and November 2019, when Parents were called by BCS to pick up Student after school, were suspensions from transportation as a related service. Parents' letter further states that the incidents related to the bus combined with the five-day OSS given to Student constituted a change of placement which obligated the District to conduct a

manifestation determination review (MDR) within 10 days of the disciplinary removal. Additionally, Parents' letter states that the District was required to provide services to Student during Student's OSS in order to provide FAPE.

28. The District initially informed Parents that the District would provide services to Student in Parent's home. However, the District later informed Parents that the suspension would be served in the District's administrative office and services would be provided at that location.

29. Student's suspension began in the District's administrative office on Friday, March 6, 2020, and there were no reported incidents of inappropriate behavior or physical aggression by Student on that day. On the next day of suspension, March 9, 2020, District records indicate that Student engaged in physical aggression toward staff members in the administrative office and caused some property damage. Due to Student's aggressive behaviors, the District informed Parents of the District's decision to change the location of Student's suspension to the 5th Street Gym, a gymnasium owned by the District (the Gym). Parents expressed concerns regarding the privacy of the Gym and whether there would be enough school staff trained in restraint available on location to ensure Student's safety. The District responded to Parents' concerns and informed Parents that there would be no others using the Gym during the day and that the District would have four staff available, and a fifth staff if needed.

30. On March 10, 2020, Student began serving Student's third day of OSS at the Gym. Student was agitated in the morning and by 9:00 a.m. Student's behaviors were significantly escalated. Student ran outside the building and was followed by the School Resource Officer (SRO) and six District staff members, including Student's teacher. Once Student was outside and off the District's property, District staff did not attempt to restrain Student, but they followed Student, attempted to verbally de-escalate Student and called 911. Student then entered a gas station, knocked over a display case, opened a package of candy and attempted to take a second package of candy. It was at this point that the SRO intervened and handcuffed Student. Student was transported back to the Gym by the SRO. After several minutes back at the Gym Student appeared to be calmed down and the SRO removed the handcuffs. Student then ran to the door which was being blocked by a staff member and a mat, Student bit the staff member who was blocking the door, which required the staff member to leave to receive medical treatment. The District then contacted Parents to pick up Student from the Gym.

31. On March 10, 2020, after Parents picked up Student at the Gym, Parents sent an email to the District expressing their concerns with the Gym as the location for Student's OSS and requesting that Student return to the [ ] school. Parents further noted their concern that the District had not scheduled an MDR regarding Student's conduct which gave rise to the OSS. District staff discussed Student's increasing behaviors during the previous two days of OSS and informed Parents that the District would change Student's last two days of OSS to in-school suspension (ISS) in a self-contained classroom at the [ ] school. The District indicates that this determination was made in order to have additional staff available in the event a staff member was injured during a restraint or responding to Student's behavior. Student did serve the remaining two days of ISS at the [ ] school.

32. District records indicate that in response to Parents' request for an MDR, on March 11, 2020, the District emailed Parents to schedule an MDR and offered to meet the following day, March 12, 2020. Parents were not able to meet on March 12th. The District and Parents eventually agreed to meet on April 2, 2020, to conduct the MDR. The Notice of Meeting provided to Parents for the MDR also indicated that the team would discuss Student's Distance Learning Plan.

33. District records and public access information related to the shutdown of public schools in South Dakota due to the COVID-19 national pandemic provide the following facts:

a. On March 13, 2020, South Dakota Governor Kristi Noem ordered all schools in South Dakota to close for one week,

b. On March 24, 2020, Governor Noem extended her closure order until May 1, 2020.

c. On April 6, 2020, Governor Noem again extended her school closure order through the end of the school year, stating that it did not make sense for students to return to school during the 2019/2020 school year.

d. On April 28, 2020, Governor Noem issued Executive Order 2020-20, directing every resident of South Dakota to follow the state's "Back to Normal Plan." This plan directed each school district in the state to determine whether, or to what extent, to resume in-person educational services.

e. The District has made the determination to continue to educate students through distance-learning.

f. As of the filing of the Complaint, the District's School Board has not reopened the District schools, nor has it authorized the provision of any in-person educational services. This determination includes the provision of ESY services as well as regular education summer school.

34. In accordance with Governor Noem's Order, the District closed its schools on March 13, 2020.

35. On March 25, 2020, District staff met with Parents via Zoom and discussed the development of a Distance Learning Plan.

36. Distance-learning began for Student on March 30, 2020 and continued until May 19, 2020.

37. On April 2, 2020, the District's MDR team met to discuss and determine whether Student's conduct on March 4, 2020, which led to Student's suspension, was a manifestation of Student's disability. The April 2, 2020, Manifestation Determination Review Form prepared by the MDR team provides, in relevant part, as follows:

a. The discipline action history of Student shows that the suspensions given to Student during the school year were two ISS and three OSS for a total of five days suspended. Parents wanted the 11 instances that Parents were called to pick up Student from BCS in September, October and November 2019, identified as suspensions, but the District did not agree that the bus incidents were suspensions.

b. Student's physical aggression toward a peer in the library resulted in the [ ] school Principal giving Student five days of OSS as a consequence.

c. Parents stated that the previous 11 bus incidents were suspensions and, therefore, the current five-day suspension given to Student constitutes a change of placement. The District rejected this argument and indicated that Student was at three days of OSS which does not constitute a change of placement.

d. It was determined that Student's behavior was an isolated incident because Student has not been suspended for the same behavior in the past.

e. It was determined that the conduct in question was caused by Student's disability or had a direct and substantial relationship to Student's disability and was therefore a manifestation of Student's disability.

38. A PPWN was provided to Parents in connection with the April 2, 2020, MDR and provides, in relevant part, as follows:

a. up to the incident, Student had received services/interventions consistent with the BIP;

b. Parent stated that during the period of OSSCISS and the School closures, services have not been consistent with the BIP;

c. the team recommended meeting once school is back in face-to-face session to revise the BIP if needed;

d. Parent stated she did not want to discuss the Distance Learning Plan; and

e. Teachers and related service providers have been communicating with Parents and Student about services and were doing distance-learning as of March 30th.

39. District records include a Special Education Distance Learning Plan dated April 3, 2020, proposed by the District for Student. Parents rejected the proposal for distance-learning services and did not want to discuss the form. Parents requested direct, in-person services for Student. The April 3, 2020, Distance Learning Plan provides, in relevant part, as follows:

a. The Plan indicates that language arts, science, social studies, reading, math and social skills would be provided through Read 180 software, PowerPoint's, video recordings, Zoom meetings and Flipgrid.

b. Accommodations and other supports that are necessary to access the academic materials being made available include a headset, laptop, Read 180, video lessons, website with visual schedule and Zoom meetings each school day.

c. Special education direct instruction would be provided through Read 180, video lessons and Zoom meetings each school day.

d. The plan provides for daily email or phone call with Parents.

e. Progress toward academic annual goals will be tracked through work samples and Zoom meetings. Adaptive and behavior goals will not be tracked during distance-learning.

f. The plan provides for a 10:00 AM check-in each day via Zoom.

g. Related services would be provided as follows: Speech services at 11:00 a.m. on Tuesdays and Thursdays, and OT will provide a short list of alternatives via email to Parent and staff.

40. District records indicate that special education and related services were provided to Student during distance-learning. The number of direct educational service minutes provided to Student during distance-learning were less than the service minutes set forth in Student's March 4, 2020, IEP. Student's teachers report that they provided the following educational services:

a. Reading: the teacher continues to read aloud a book to Student in pre-recorded videos. After completing each video, Student would answer comprehension questions related to each chapter or section.

b. Math: the teacher obtained a curriculum from the math resource room teacher and Student's teachers completed example problems, recorded videos and were available to answer questions. Student completed all math assignments and received most if not all the points for every assignment.

c. Language Arts/Written Expression: the Teacher continued to utilize the Read 180 Program which had been used in the classroom before distance-learning began. The teacher recorded a video discussing how and why to cite text evidence and Student practiced these skills by reading passages and answering questions. The teacher reports that Student's best writing and most coherent and complex sentences were produced during distance-learning.

d. Social Science: the teachers continued to read aloud a book about the Civil War by recording videos reading each chapter or section. Student had two days to watch the video and answer questions related to the reading.

e. Science: the teachers customized their science program to use games and videos to convey information on topics such as properties of matter, atoms, waves and energy.

f. Student also participated in class discussions where students could submit videos via Flipgrid. The teachers report that Student submitted 33 videos across all subjects, including math and

science. The teachers also converted other classroom activities, such as escape rooms, into electronic format so that Student could learn from those activities.

g. The teachers report that the number of service minutes identified in the spreadsheets used to track services provided to Student during distance-learning are less than the service minutes they provided.

41. District records indicate that Speech/Language services were provided to Student usually two times per week during distance-learning. The service minutes provided were less than called for in Student's March 4, 2020, IEP, but the SLP providers logs indicate that the SLP provided teletherapy sessions via Zoom and Student participated well and made progress.

42. District records indicate that indirect services were provided by the OT to Parents to develop alternative activities that Student could do. The OT's logs and email indicate that the OT communicated with Student and consulted with Parents several times per month during the distance-learning.

43. Progress Reports for Student for the 2019/2020 school year prior to the school closure order on March 13, 2020, and the subsequent distance-learning period, all indicate that Student made progress on Student's annual goals.

44. On May 11, 2020, Parents sent an email to the District regarding ESY for Student. Among other things, Parents indicated that they anticipated that Student would be attending ESY in a classroom setting at the school. The District and Parents agreed to meet on May 15, 2020, to discuss Student's ESY plan.

45. On May 15, 2020, Student's IFP team met to discuss ESY services for Student during the Summer, 2020. The May 15, 2020, PPWN regarding this meeting provides, in relevant part, as follows:

a. The District offered ESY services through distance-learning due to the current status of COVID-19, at the same service times and days of the week as previously determined in Student's March 4, 2020, IEP.

b. Parent stated that they wanted the District to get creative and problem solve how to provide in-person services to Student because they believe that distance-learning was not effective and did not provide FAPE to Student. "[Parent] feels that this is not working academically, socially or behaviorally or for her family. It takes the family half a day to support [Student] and they feel they cannot keep this up."

c. The District stated that "ESY would be provided remotely through June, and the team could come back together to look at providing face-to-face if the situation with CoVid is safer." The IEP team discussed safety issues regarding wearing a mask and staying 6 feet apart or physical distancing. Student's special education teacher expressed concerns about exposure and health issues if learning is face-to-face.

d. Parent "again rejected any remote and wants the team to meet again."

e. The IEP team agreed to discuss ESY later.

f. Parent indicated that five additional months of services should be added to Student's plan to compensate for lost services.

46. District records include a Meeting Notice indicating it was sent on May 19, 2020, to Parents regarding a meeting scheduled for May 20, 2020 at 8:00 a.m. to discuss ESY services and other concerns of Parents. Emails between the District and Parent on May 19, 2020, with the subject line "meeting tomorrow -- please confirm," and the fact that Parent was asking what the District wanted the IEP team to discuss "at tomorrow's meeting," indicate the District's intention to meet with Parent on May 20, 2020. The District replied to Parent's email and stated that the District "will continue to implement [Student's] IEP, as written for ESY, in the distance-learning model, until such time as it is providing face-to-face suspension, for more than 10 school days during the 2019/2020 school year and, if so, did the District adhere to the IDEA and State rules by:

a. Conducting a manifestation determination regarding Student's disciplinary removal within 10 school days following a behavior incident which occurred on March 4, 2020, as required by 34 CFR § 300.530(e), and ARSD 24:05:26:09.03; and

b. Providing appropriate educational services to Student on March 6, 9 and 10, 2020, during Student's disciplinary removal, as required by 34 CFR § 300.530(d)?

The IDEA and State Rules provide that a student who has been determined to be eligible for special education and related services, and who engages in behavior that violates a code of student conduct, may be subject to disciplinary removal for up to 10 consecutive school days in a school year without causing a change in the student's placement. 34 CFR §300.530(b)(1). For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if:

(i) The removal is for more than 10 consecutive school days; or

(ii) The child has been subjected to a series of removals that constitute a pattern-

(iii) Because the series of removals totaling more than 10 school days in a school year;

(iv) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in a series of removals; and

(v) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

34 CFR §300.536(a)(1). The District determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. 34 CFR §300.536(b)(1). This determination is subject to review through due process and judicial proceedings. 34 CFR §300.536(b)(2). Within

10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability. 34 CFR §300.530(e)(1). If it is determined that the child's conduct was a manifestation of the child's disability, the IEP team must either conduct a FBA and implement a BIP, or if a BIP already has been developed, review the BIP and modify it as necessary to address the behavior, and return the child to the placement from which the child was removed, unless the LEA and the parent agree otherwise. 34 CFR §300.530(f).

A change in transportation may constitute a change in placement, only if, the change affects the student's learning experience in some significant way. *DeLeon v. Susquehanna Cmty. Sch. Dist.*, 556 IDELR 260 (3d Cir. 1984). In *Necedah School District*, 34 IDELR 166 (SEA WI 2001), the district did not deny FAPE to an elementary school student with a disability when it suspended him from riding the bus for misconduct on the bus. The student continued to receive the services required by his IEP and did not miss school during the suspension.

The facts relevant to Issue 1 are as follows: During the 2019/2020 school year, Student was eligible to receive special education and related services under an IEP. On 11 or 12 occasions during the months of September, October and November 2019, Parents were required to pick up Student at BCS and transport Student home. Student did not receive a written bus suspension from BCS or the District on any of the days in question. The reasons for Student not riding the school bus home on the days in question was either that Student hadn't finished Student's work that day due to maladaptive behaviors, and was staying late to finish Student's work as written in Student's BIP, or that Student's behavior at the time of the bus pickup was deemed too dangerous to ride the school bus. Student's behavior on the bus was not the reason why Parent was called to pick up Student. Student did not miss any educational services on the occasions when Parent was called to pick up Student because on every such occasion this occurred at the end of the school day. The District did not conduct an MDR regarding the times when Parent was required to transport Student home from BCS, as requested by Parent. After Student began attending school full-time in the District, the District provided alternate transportation for Student to home on the occasions when Student was not able to ride the school bus home due to Student's behavior.

On March 4, 2020, Student was suspended as a consequence for a violation of the District's code of student conduct. The total amount of time that Student was suspended from school was five days. Three of those days were spent in OSS and two were spent in ISS. On all the days that Student was suspended the District provided some educational services to Student except on March 10, 2020, when a serious behavior incident by Student resulted in Student being taken home by Parents. At the start of Student's suspension, Parents requested an MDR. This request was made during a meeting on March 5, 2020, when the District informed Parents of Student's five-day suspension. The District initially rejected Parent's request for an MDR. However, the District later contacted Parents on March 11, 2020, and offered to conduct an MDR the following day, but Parents were not able to meet on that date. The District did convene a meeting of the MDR team, including Parents, on April 2, 2020. The MDR team concluded that Student's behavior on March 4, 2020, was a manifestation of Student's disability. However, the District

also determined that Student's disciplinary removal for five days did not constitute a change of placement because it was for less than 10 consecutive school days.

Parents have not claimed that the five-day suspension given to Student as a consequence for the behavior incident that occurred on March 4, 2020, would, by itself, trigger the District's obligation to conduct an MDR. Parents argue that what they refer to as the "bus suspensions" should have triggered a MDR in November, 2020, and when added to the five day suspension given in March, 2020, the District was required to conduct a MDR prior to Student being removed from Student's educational placement.

There was not a violation of Part B of IDEA

In view of the facts and law set forth above, the complaint investigator makes the following conclusions: It is concluded that the occasions in September, October and November, 2019, when Parents were called to transport Student home from BCS after school were not bus suspensions or disciplinary removals because Student's CMP, which was agreed to by Parents, provides that if Student's behavior escalates to a point where staff cannot effectively keep Student and others safe then the Clinical Supervisor will call Parents and discuss options moving forward such as Parents giving a PRN or picking Student up. It is further concluded that even if these incidents regarding bus transportation could, for any reason, be considered "bus suspensions," there was no substantive harm caused to Student because every incident occurred at the end of the day and Student did not lose any time at school or any school services on any day and, therefore, these incidents did not of themselves obligate the District to conduct a MDR in November, 2019. It is further concluded that at the time that Student was suspended for five days in March, 2020, Student had not been subject to a series of prior disciplinary removals which, when added to the five day suspension in March, totaled more than 10 school days. It is further concluded that since the number of days of suspensions given to Student during the 20192020 school year, totaled less than 10 school days, the District was not required to conduct a MDR, or provide educational services to Student during, the five day suspension in March, 2020. Finally, it is concluded that even though the District was not required to provide educational services to Student during Student's five day suspension in March, 2020, the District did provide educational services to Student on every day of said suspension except for March 10, 2020, when Student's behavior escalated to the point where Parents were called to take Student home.

Therefore, it is concluded that the District did not implement a series of disciplinary removals of Student from District transportation (the school bus), or from Student's educational placement due to suspension, for more than 10 school days during the 2019/2020 school year. It is further concluded that the District was not required to provide educational services to Student during Student's disciplinary removal in March 2020, but the District did provide appropriate educational services to Student during said removal on March 6, 9, 11 and 12, 2020.

Issue 2. Did the District unilaterally change Student's placement by failing to provide direct, in-person, special education and related services to Student, as described in Student's IEP, when the District closed its schools and implemented distance-learning during the state mandated school closure period from March 13, 2020, through the period of ESY?

As indicated in the Findings of Fact above, On March 13, 2020, South Dakota Governor Kristi Noem ordered all schools in South Dakota to close for one week due to COVID-19. On March 21, 2020, The U. S. Department of Education, Office of Special Education and Rehabilitative Services and Office for Civil Rights provided guidance in the form of a Supplemental Fact Sheet to school districts across the nation regarding COVID-19, as follows:

At the outset, OCR and OSERS must address a serious misunderstanding that has recently circulated within the educational community. As school districts nationwide take necessary steps to protect the health and safety of their students, many are moving to virtual or online education (distance instruction). Some educators, however, have been reluctant to provide any distance instruction because they believe that federal disability law presents insurmountable barriers to remote education. This is simply not true. We remind schools they should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities. Rather, school systems must make local decisions that take into consideration the health, safety, and wellbeing of all their students and staff.

School districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, OCR and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.

The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.

Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services -- or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.

Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities, 76 IDELR 104 (OSERS March 21, 2020).

On March 24, 2020, Governor Noem extended her closure order until May 1, 2020. On April 6, 2020, Governor Noem again extended her school closure order through the end of the school year. On April 28, 2020, Governor Noem issued Executive Order 2020-20, directing every resident of South Dakota to follow the state's "Back to Normal Plan." This plan stated that each school district in the state should make its own decisions about whether, or to what extent, to resume in-person educational services. South Dakota's Back to Normal Plan, pgs. 4 and 6 (Apr. 28, 2020). The District made the determination to continue to educate its students through distance-learning. As of the filing of the Complaint, the District's School Board had not reopened the District schools or authorized the provision of any in-person educational services. This determination included the provision of ESY services as well as regular education summer school.

Under the IDEA and State rules, the term "placement" refers to the entire educational program and services being provided to the child as set forth in the child's IEP and not merely the location where those services are provided. If a proposed change substantially or materially affects the composition of the educational program and services provided to the child, then a change in placement occurs, triggering the notice requirement. *Letter to Flores*, 211 IDELR 233 (OSEP 1980); *Letter to Fisher*, 21 IDELR 992 (OSEP 1994); and *Veazey v. Ascension Parish Sch. Bd.*, 42 IDELR 140 (5th Cir. 2005, unpublished), *cent. denied*, 112 LRP 58755, 546 U.S. 824 (2005).

Parents argue in their Complaint that the District unilaterally changed Student's placement when the District closed its schools and implemented Distance-learning during the state mandated school closure period from March 13, 2020, through the period of ESY. The District argues that implementing distance-learning rather than providing in-person learning was mandated by the Governor and the School Board and is not a change in placement. The District further argues that the District substantially provided to Student the educational and related services set forth in Student's IEP during distance-learning. Parents do not agree that Student was provided appropriate educational and related services during distance-learning because Student did not have access to peers and the services provided were much less than provided in Student's IEP. The District argues that due to the school closure order and subsequent distance-learning, and that in-person educational services were not safe during the COVID-19 pandemic, it was not possible for the District to provide services in the same manner that were typically provided to Student. However, as the District has acknowledged under the above Federal and state guidance, it will be necessary for Student's IEP team to meet and make "an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations." Supplemental Fact Sheet, *Id.* at 105.

There was not a violation of Part B of IDEA

It is concluded that the District appropriately complied with Governor Noem's school closure orders in March and April 2020, when it closed its schools and implemented distance-learning due to the COVID-19 pandemic. It is further concluded that the District's decision to provide ESY services to Student during the Summer, 2020, through distance-learning rather than direct, in-person, services, does not constitute a unilateral change in Student's placement. Therefore, it is concluded that the District did not unilaterally change Student's placement by implementing distance-learning for general and special education and related services to Student when the

District closed its schools during the state mandated school closure period from March 13, 2020, through the period of extended school year (ESY).

Issue 3. Did the District implement Student's special education and related services as set forth in Student's March 4, 2020, IEP during the state mandated school closure period and during ESY as required by 34 CFR §§ 300.39 and 300.323(c)(2)?

Students with disabilities who are eligible under the IDEA are entitled to be appropriately identified, evaluated, placed, and have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300. I (a). "Central to IDEA is the requirement that local school districts develop, implement, and annually revise an individualized education program (IEP) calculated to meet the eligible student's specific educational needs. 20 U.S.C. § 1414(d)." *Thompson R2,1 School Dist. v. Luke.*, 540 F.3d 1143, 1144 (10th Cir. 2008). The "IEP is a written statement that sets forth the child's present performance level, goals and objectives, specific services that will enable the child to meet those goals, and evaluation criteria and procedures to determine whether the child has met the goals," *Ass'n for Cmty. Living in Colo. v. Romer*, 992 F.2d 1040, 1043 (10th Cir. 1993). The goals must enable the child to be involved in and make progress in the general academic educational curriculum and meet each of the child's other educational needs that result from the child's disability. 34 CFR § 300.320(a)(2)(ii).

The U.S. Supreme Court has recently provided additional guidance and clarification with respect to the IDEA's FAPE standard. In *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017), the Court held that a proper inquiry into whether a FAPE has been provided is whether a district's plan is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. For students who are not on a regular diploma track this generally means that to meet the Supreme Court's FAPE standard, an IEP should be tailored to the unique needs of the particular child and appropriately ambitious in light of the child's circumstances. *Id.*

The IDEA and State rules require districts to ensure that students IEPs are implemented by each regular education teacher, special education teacher, the related services provider, and any other service provider responsible for its implementation. 34 CFR § 300.323(d). Although school districts should strive to follow IEP's as closely as possible, the IDEA does not require perfect adherence to a child's IEP. Minor discrepancies between the services provided and the services called for by the IDEA do not give rise to an IDEA violation. *Van Dun ex. rel. Van Dun v. Baker Sch. Dist.* 5J, 502 F.3d 811, 821 (9th Cir. 2007). The 8th U.S. Circuit Court of Appeals, *citing Houston Indep. Sch. Dist. v. Bobby R.*, 31 IDELR 185 (5th Cir. 2000), *cert. denied.* 111 LRP 30885, 531 U.S. 817 (2000), has held that only a material implementation failure will qualify as a denial of FAPE. *Neosho R-V Sch. Dist. v. Clark*, 38 IDELR 61 (8th Cir. 2003). A school district can establish substantial compliance by showing that the student made progress toward achieving his goals, showed improvement in his grades, and received passing scores on state assessments. *A.P. v. Woodstock Bd. of Educ.*, 55 IDELR 61 (2d Cir. 2010, unpublished)

In their complaint, Parents argue that the District failed to implement all of Student's special education and related services set forth in the March 4, 2020, IEP. The District admits that

providing all of the educational and related service minutes during the school closure period was not possible due to distance-learning, but the District alleges that it materially and substantially implemented Student's IEP. Student's teachers indicate that they did work on Student's annual goals in the goal areas identified in the IEP. The service provider logs do indicate that Student received Speech services two times per week. The Progress Reports compiled by the District for the distance-learning periods at the end of the school year and during ESY indicate that Student made progress on Student's annual goals. The District also points to the fact that Student was able to be advanced to the [ ] grade to attend [ ] school next year. Parents argue that the Progress Reports are inaccurate due to the fact that Parents assisted Student in completing Student's distance-learning assignments and without Parents' assistance Student would not have made the same progress. This may in fact be true, but there is no evidence or documentation in the record to support this allegation.

With respect to a lack of implementation by the District regarding Student's educational program, the one point on which the parties agree is that the District failed to implement Student's educational services on June 1, 2020, the first day of ESY. The District has acknowledged that Student is entitled to compensatory education services to replace those not provided to Student on that day.

There was a violation of Part B of IDEA, which resulted in a denial of FAPE

Therefore, the documentation does not support a conclusion that the District failed to materially and substantially implement Student's special education and related services as set forth in Student's March 4, 2020, IEP during the state mandated school closure period. However, it is concluded that the District failed to provide one day of ESY services to Student on June 1, 2020. Therefore, the District's actions and/or omissions did result in the denial of FAPE to Student.

Issue 4. Did the District's actions and/or omissions in relation to transportation result in the denial of FAPE to Student, in violation of 34 CFR §§300.17 and 300.101?

The IDEA regulations and State rules provide that districts must provide transportation as a related service when a student with a disability requires that service in order to benefit from special education. 34 CFR §300.34(a). The IDEA defines "transportation" as including travel to and from school and between schools, travel in and around school buildings, and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. 34 CFR §300.34(c)(16). The IDEA mandates that transportation as a related service must be provided to students with disabilities if required by the student's IEP. Therefore, IDEA funds may clearly be used to fund such required transportation. It is clear that if an IEP requires transportation as a related service, a failure to provide it is a violation of the IDEA and may result in a denial of FAPE by the district.

For the same reasons that the scheduling of educational programming is left within the sole discretion of school districts, the scheduling of related services such as transportation also falls within the districts' discretion. When making transportation decisions, districts are not generally required to consider convenience to parents. A student's IEP team must make the determination as to whether a child with a disability requires transportation as a related service. 34 CFR

§300.34(c)(16). If an IEP team determines that transportation is a related service, the type of transportation services provided must be based on the student's individualized needs and made on a case-by-case basis. 34 CFR § 300.320 through 34 CFR §300.324; and *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982). However, the transportation provided by the district must be free to the parents and appropriate for the student.

In a situation where parents provide the transportation required by the student's IEP, neither IDEA regulations nor administrative guidance provides detailed directives concerning parental reimbursement for transportation. Courts interpreting this issue have not established a specific formula for determining reasonable rates, but they have made it clear that the rates should be related to the market value of the actual services provided rather than what the parent's time might be worth in the course of performing his regular occupation. *See Hurry v. Jones*, 555 IDELR 543 (1st Cir. 1984); and *Zak L. v. Cambridge Sch. Comm.*, 30 IDELR 863 (D. Mass. 1999). *See also Chester County Mental Health/Mental Retardation Agency*, 7 ECLPR 92 (SEA PA 2009) (A county agency was not required to pay a stipend to compensate a parent who transported his child to school for lost work time.).

Districts do have discretion regarding the scheduling of transportation for students with disabilities, but a school district cannot demand that parents transport their children to school. If the district asks the parent to transport the student and the parent declines, the district must implement its own transportation program. *See Knappa Sch. Dist.*, 119 LRP 43054 (SEA OR 06/25/19) (noting that because the parents informed the district that their work schedule did not allow them to transport the student to his new educational placement, the district's failure to acquire a bus driver to transport the student constituted a denial of FAPE). If parents do agree to transport a student with a disability, the district must properly reimburse the parents for their transportation costs. An inadequate reimbursement policy or practice may result in a denial of FAPE. *Washoe County (NV) School District*, 55 IDELR 234 (OCR 2010).

The facts of this matter, as set forth above, are clear with respect to the issue of transportation of Student home from BCS. Student's IEP team decided that it was in the best interest of Student to attend BCS in the afternoons. Student's IEP states that Student will receive transportation as a related service from home to school and from school to home five times every week. On 11 or 12 occasions during the months of September, October and November 2019, Parents were required to transport Student home from BCS. The reason for Parents being called to transport Student home on the occasions in question was not due to Student being suspended from the bus. Although there is not agreement between the District and Parents on the dates Parents were called to pick up Student, neither record totals more than 12 days. Parents were required to drive a total of no more than 72 miles. Parents were not provided mileage reimbursement by the District when Parents were called to Transport Student home from BCS. The educational program provided to Student cannot be considered as "free" to Parents, as required by the IDEA and State rules, because Parents have been required to pay for the transportation which Student was entitled to receive under Student's IEP.

There was a violation of Part B of IDEA, which resulted in a denial of FAPE

It is concluded that Student's IEP provides for transportation home from school, five times per school week, as a related service, and the District failed to provide bus transportation, or alternate transportation, for Student, and also failed to make an offer of reimbursement to Parents to transport Student home from school on 11 or 12 occasions during the Fall, 2019. Therefore, it is concluded that the District's actions and/or omissions in relation to transportation did result in the denial of FAPE to Student.

### Summary

For the reasons stated above, the District is out of compliance in regard to Issues 3 and 4 referenced in this report.

### Corrective Actions

A response to this written report, which addresses the steps the District will take to complete the assigned corrective action, including the timeline for completion, must be received by the Department by August 14, 2020.

1. The District will take immediate action to schedule a meeting of Student's IEP team prior to the beginning of the 2020/2021 school year, the District or Parents may request an IEP facilitation from the Department, to discuss, among other things, the following:

a. The District will schedule a time with Parents to provide to Student the educational services not provided on June 1, 2020. Student's IEP team will discuss and determine whether said services shall be provided remotely via distance-learning or face-to-face at Student's school. The District shall provide the one day of compensatory ESY services to Student prior to the beginning of the 2020/2021 school year, unless Parents, through reasonable efforts, are not able to schedule a time for the services prior to the beginning of school.

b. The District shall provide to the Department a copy of the Notice of Meeting for the IEP team meeting described above, and a copy of the PPWN prepared and provided to Parent regarding the above referenced IEP team meeting.

2. The District shall immediately take steps to compensate Parents for providing Student's transportation home from BCS. Compensation shall be paid at the mileage reimbursement rate established by the state, unless the District has established a higher student transportation reimbursement rate, multiplied by 72, the maximum number of total miles driven by Parents. The District shall provide to the Department a copy of the reimbursement made to Parent no later than August 21, 2020.

3. The District will review its comprehensive plan and/or district procedures and policies, with a focus on the provision of transportation as a related service, and will revise these documents, if warranted.

a. The District will submit to the Department the comprehensive plan and/or any revised policies and procedures.

b. The District will submit documentation of school board approval if the comprehensive plan and/or policies and procedures are revised.

This is the final decision of the State Director of Special Education. If you have questions regarding this report, please contact Wendy Trujillo at (605) 773-3678.

Sincerely,

//signed

Linda Turner

Director, Special Education Programs

### **Regulations Cited**

34 CFR 300.536(b)(1)  
34 CFR 300.536(b)(2)  
34 CFR 300.536(a)(1)  
34 CFR 300.530(e)(1)  
34 CFR 300.530(f)  
34 CFR 300.39  
34 CFR 300.323(d)  
34 CFR 300.17  
34 CFR 300.34(a)  
34 CFR 300.34(c)(16)  
34 CFR 300.320  
34 CFR 300.324

### **Cases Cited**

747 F.2d 149 I 556 IDELR 260. \* - Followed  
34 IDELR 16  
76 IDELR 104  
211 IDELR 233  
21 IDELR 992  
121 F. App'x 552 I 42 IDELR 140. \* - Followed  
502 F. 3d 811 I 107 LRP 51958. \* - Followed  
315 F.3d 1022 I 38 IDELR 61. \* - Followed  
102 S. Ct. 3034 I 553 IDELR 656. \* - Followed  
734 F.2d 879 I 555 IDELR 543. \* - Followed  
44 F. Supp. 2d 395 I 30 IDELR 863  
7 ECLPR 92. \* - Followed  
119 LRP 43054  
55 IDELR 234. \* - Followed  
540 F.3d 1143 I 50 IDELR 212. \* - Followed

137 S. Ct. 988 I 69 IDELR 174. \* - Followed